

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1494 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DIPAKKUMAR BHANUPRASAD JANI

Versus

HINABEN EX-W/O DIPAKKUMAR BHANUPRASAD JANI

Appearance:

MR JV JAPEE for Petitioner

SERVED for Respondent No. 1

Mr. K.P. Raval, APP for Respondent No. 3

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 23/01/98

ORAL JUDGEMENT

The petitioner prays to quash and set aside the order dated 14th October 1997 passed by the learned Judicial Magistrate (F.C.), Idar, in Criminal Misc. Application No. 4 of 1997 on his file whereby the petitioner is ordered to pay the amount of maintenance already awarded failing which distress warrant is ordered to be issued.

2. In short, the facts leading the present

petitioner to file this application may be stated. The petitioner married the opponent No.1 and during their married life opponent No.2 was born. Initially the married life of the petitioner and opponent No.1 was brooming over with pleasure but later on dissension arose between the two. The bitterness between the two grew stronger, and viable solution being impossible the opponent No.1 started to reside separately. She then filed Criminal Misc. Application before the ld. JMFC at Idar for getting the amount of maintenance invoking Section 125 of the Criminal Procedure Code. Hearing the parties that application was allowed. The learned Magistrate ordered the petitioner to pay Rs. 400/- per month to opponent No.1 and Rs.100/- p.m. to opponent No.2 by way of maintenance. Before that order was passed the petitioner had already filed the petition before the Family Court at Bombay being M.J. Petition No. A-597/1991 for a decree of divorce. In that marriage petition on 16th July 1995 the parties settled their dispute and as per the terms of settlement decree of divorce came to be passed on 30th September 1995. As per the decree passed the petitioner had to pay Rs. 37,500/towards the life time maintenance of the opponent No.1 and likewise amount towards the lifetime maintenance of opponent No.2 in full and final satisfaction of the claim. It was also agreed that after the payment of Rs. 75,000/- as per the consent decree is made up the petitioner will not have to pay any amount of maintenance ordered by the ld. JMFC at Idar and that obligation will come to an end. Thereafter on 27th July 1995 the petitioner paid Rs. 40,000/- and on 3rd August 1995 he paid Rs. 35,000/-, in all he deposited Rs. 75,000/- in Family Court. The said amounts as per the submission made before me have already been paid to the opponents No. 1 & 2. After 3rd August 1995 therefore the petitioner was not bound to pay any amount under the order of the ld. JMFC at Idar. However, the opponent No.1 filed Criminal Misc. Application No. 4 of 1997 before the Court of the ld. JMFC at Idar for realisation of the amounts from 1st January 1996 alleging that she was already paid the amount of maintenance upto December 1995. That application was presented on 6th January 1997. On being served with the notice the petitioner appeared before the ld. JMFC at Idar and presented the application on 2nd May 1997 for cancellation of the order of maintenance passed in Criminal Misc. Application No. 47 of 1992. That application was given under Section 127 (3)(b) of Criminal Procedure Code which is registered as Criminal Misc. Application No. 81/97. The certified copy thereof is produced today before this Court and is taken on record. The learned Magistrate thereafter

without disposing of the application of the petitioner passed the impugned order in Criminal Misc. Application No. 4/97 and ordered the applicant to make the payment of the amount of maintenance that had according to opponent No.1 become due failing which distress warrant was also ordered to be issued. It is against that order this Special Criminal Application is filed.

3. The opponents No. 1 & 2 are served with the notice, but no one has appeared on their behalf and they have also abstained from appearing before this Court. Mr. Raval, learned APP has appeared on behalf of the opponent No.3.

4. While exercising the supervisory jurisdiction this court has to examine whether the impugned order passed by the ld. JMFC is legal and valid. It is not necessary to repeat the facts I have stated hereinabove. From those facts, it is clear that after the order awarding maintenance was passed on 24th April 1992 the parties settled their dispute before the Family Court at Bombay, and as per the consent terms consent decree came to be passed. As per that decree the applicant had to pay the amount of maintenance of Rs. 75,000/- by way of full and final satisfaction of life long entire claim of both the opponents No. 1 & 2. After such payment the petitioner had to pay nothing even under the order passed by the ld. JMFC as the opponents No. 1 & 2 had accepted the amount of Rs. 75,000/- towards their life long claim of maintenance. The amount of Rs. 75,000/- was paid up in piece-meal and nothing thereof remained due from 3rd August 1995. The applicant had to pay nothing as his liability whatever arose under the order had ceased to continue. However, he paid the amount of maintenance upto December 1995. The opponent No.1 then filed the application for recovery of the amount for a period from 1st January 1996 and before that application could be disposed of the petitioner presented the application which is registered as Criminal Misc. Application No. 81/97 for cancellation of the order in view of the consent decree passed by the Family Court and amounts thereunder having been already paid. The learned Magistrate, instead of deciding that application, ignored the same and passed the order in Criminal Misc. Application No. 44 of 1997 ordering the applicant to make the payment. The learned Magistrate ought not to have in view of such facts hurriedly passed the order in question. He ought to have first disposed of the Criminal Misc. Application No. 81 of 1997, and then if necessary appropriate order ought to have been passed. When that is not done, the order passed cannot be

maintained. It is required to be set aside.

5. For the aforesaid reasons, the application is allowed. The impugned order passed by the ld. JMFC at Idar in Criminal Misc. Application No. 4/97 calling upon the applicant to make the payment of maintenance amount failing which directing to issue distress warrant is hereby set aside. The ld. JMFC at Idar is hereby directed to first decide Criminal Misc. Application No. 81/97, and then if necessary he may proceed to decide Criminal Misc. Application No. 4/97 on his file and hearing the parties he may pass the appropriate order in accordance with law. No costs in the circumstances. Rule accordingly made absolute.

6. The parties to appear before the ld. JMFC at Idar on February 11, 1998 at 11.00 A.M.

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